BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CRYSTAL A. HATFIELD,

Appellant, Plaintiff below,

v.

No. 33702

HEALTH MANAGEMENT ASSOCIATES OF WEST VIRGINIA, INC. d/b/a WILLIAMSON MEMORIAL HOSPITAL, and JACQUELINE ATKINS, individually, and CASSIE BALL, individually,

Appellees, Defendants below.

BRIEF OF APPELLANT CRYSTAL A. HATFIELD

Jeffrey V. Mehalic (WV State Bar No. 2519)
Law Offices of Jeffrey V. Mehalic
2011 Quarrier Street
P. O. Box 11133
Charleston, WV 25339-1133
(304) 346-3462

Counsel for Appellant Crystal A. Hatfield

Robinson & McElwee PLLC
400 Fifth Third Center
700 Virginia Street, East
P. O. Box 1791
Charleston, WV 25326
(304) 344-5800

Of counsel for Appellant Crystal A. Hatfield

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KIND OF PROCEEDING AND NATURE OF THE RULINGS BELOW

This proceeding is an appeal by Appellant Crystal A. Hatfield ("the Plaintiff"), Plaintiff below, from two orders of the Circuit Court of Mingo County.

In the first order, entered on July 28, 2006, the circuit court granted the motion for summary judgment filed by Appellees Health Management Associates of West Virginia, Inc. d/b/a Williamson Memorial Hospital, Jacqueline Atkins, and Cassie Ball (collectively "the Defendants"), Defendants below, as to the Plaintiff's claims for breach of contract, breach of the duty of good faith and fair dealing, and detrimental reliance.

In the second order, entered on February 7, 2007, the circuit court granted the Defendants' motion for summary judgment as to the Plaintiff's remaining claims for tortious interference and intentional infliction of emotional distress.

The Plaintiff submits this brief pursuant to this Court's Order of November 7, 2007, which granted her Petition for Appeal.

STATEMENT OF FACTS

In March 2005, the Plaintiff learned from Gregg Moore that the position of "Benefits/Special Projects Coordinator" was open at Defendant Williamson Memorial Hospital ("WMH") in Williamson, West Virginia. (Hatfield Transcript at 26). Mr. Moore was WMH's Plant Operations Director and was also the Plaintiff's fiance's father (Moore Transcript at 4, 7). The Plaintiff lived in Matewan, West Virginia, but was employed in Charleston, West Virginia, and was interested in the position because it would enable her

to eliminate her daily commute to Charleston and spend more time with her daughter. *Id.* at 22.

The Plaintiff applied for the position and was interviewed by Robert Channell, WMH's then-Human Resources Director, and Robert Mahaffey, WMH's then-Administrator (or chief executive officer). *Id.* at 28, 38. Although the position would also report to the Plant Operations Director, Mr. Moore removed himself from the interviewing and hiring process because of the Plaintiff's relationship with his son. (Moore Transcript at 11). After these interviews, the Plaintiff was offered the position, which she accepted. *Id.* at 42-43.

WMH's offer of the position and the Plaintiff's acceptance thereof were reflected in a letter to the Plaintiff dated March 28, 2005, and signed by Mr. Channell, Mr. Mahaffey, and Mr. Moore (Hatfield Transcript, Exhibit 1). The letter confirmed the Plaintiff's salary and informed her of her eligibility for participation in WMH's employee benefit program.

In reliance on WMH's offer of employment and based on her acceptance of the same, the Plaintiff resigned from her employment in Charleston, which left her with no means to support herself and her daughter except for her prospective employment at WMH (Hatfield Transcript at 60-61). The Plaintiff signed the letter on March 29, 2005, which represented the date she was hired for the position at WMH. *Id.* at 44.

The Plaintiff began work at WMH on April 11, 2005 as the Benefits/Special Projects Coordinator. *Id.* at 87. Almost immediately, however, and for various reasons, the Plaintiff's employment caused disgruntlement among other employees at WMH, only one

of whom had actually applied for the position that the Plaintiff received. In fact, the Plaintiff was not aware that anyone else had applied for the position. *Id.* at 86. The record is clear that the Plaintiff was not aware of any dissension among other employees, nor had she done anything to cause or contribute to the dissension (other than to accept employment with WMH).

When the Plaintiff began work on April 11, 2005, Defendant Jacqueline Atkins ("Ms. Atkins"), WMH's associate executive director for patient services, and Defendant Cassie Ball ("Ms. Ball"), WMH's then-chief financial officer, were responsible for managing WMH in the absence of an administrator.[1]

During the Plaintiff's employment at WMH, she had very little contact with Ms. Atkins; in fact, the Plaintiff spoke with Ms. Atkins on only two occasions. The first was on April 11 when she and Atkins and others had lunch in the hospital cafeteria and engaged in small talk. *Id.* at 87-88. The Plaintiff did not find anything out of the ordinary during that exchange.

Their other conversation took place on April 13, when Ms. Atkins came to Rob Channell's office to talk with him and asked the Plaintiff to leave. *Id.* at 89. The Plaintiff thought the atmosphere was tense, but as she had not been at WMH "long enough to do anything," she did not think the conversation involved her. *Id.* at 90. In fact, Mr. Channell

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[1] Robert Mahaffey had been serving as WMH's administrator on an interim basis and resigned prior to the Plaintiff commencing work on April 11, 2005. WMH's policy permitted the hospital to be managed on an interim basis by the individuals holdings Ms. Atkins' and Ms. Ball's positions until such time as another administrator was appointed.

assured the Plaintiff afterwards that although there were some questions about her employment, which he wanted to make her aware of, the Plaintiff had nothing to worry about. *Id.* at 91. (Even on April 14, when Mr. Channell terminated the Plaintiff at the direction of Ms. Atkins and Ms. Ball, the Plaintiff did not understand immediately that she was being terminated. *Id.* at 94. Rather, she thought she was supposed to go home until her status at WMH was resolved. *Id.*)

Ms. Ball confirmed in her deposition that she never had any discussion or conversation with the Plaintiff to tell her that she was being terminated, nor did Ms. Ball ever make the Plaintiff aware during her four days of employment (April 11-14) that there were any problems or discrepancies with her rate of pay (Ball Transcript at 60). Ms. Ball did not know whether Ms. Atkins had any conversations with the Plaintiff or made the Plaintiff aware that there were problems with her employment, and Ms. Atkins testified that she never had any conversations with the Plaintiff about her employment (Atkins Transcript at 55).

Ms. Ball also testified that no one instructed her and Ms. Atkins to terminate the Plaintiff (Ball Transcript at 60). She also admitted that if she and Ms. Atkins had chosen, they could have allowed the Plaintiff to remain in her position. *Id.*

Ms. Ball's testimony is consistent with testimony with corporate representatives of Health Management Associates, Inc. ("HMA"), the parent company of WMH. For example, Kathleen Holloway, corporate counsel for HMA, with whom Ms. Atkins and Ms. Ball spoke regarding the Plaintiff's termination, testified that the Plaintiff could have been

permitted to remain in the position for which she had been hired, and that neither Ms. Atkins nor Ms. Ball would have been reviewed had they let the Plaintiff remain in her position. (Holloway Transcript at 59-60).

Ms. Holloway also testified that during her telephone conversation with Ms. Atkins and Ms. Ball regarding the Plaintiff's termination, someone (whose identity Ms. Holloway did not recall) suggested the possibility of offering the Plaintiff the same position but at a rate of pay that was within the salary range that was assigned to the position. *Id.* at 71. Ms. Atkins and Ms. Ball decided not to make that offer to the Plaintiff. *Id.* at 72.

Likewise, C. Scott Campbell, the vice president of operations for the Mid Atlantic Division of HMA, testified that Ms. Atkins and Ms. Ball could have chosen to allow the Plaintiff to remain in her position without repercussions to themselves. (Campbell Transcript at 39-40). Mr. Campbell also testified that the Plaintiff would not have been aware of any restriction on her hiring that may have been imposed by HMA, as that information would be shared at the management level. *Id.* at 57.

Ms. Atkins also testified that she did not consider asking the Plaintiff to take a pay cut, nor did she give any consideration to restructuring the position so that the Plaintiff would be able to keep her job (Atkins Transcript at 65-66). Ms. Atkins also testified that Ms. Holloway did not direct her to terminate the Plaintiff, but simply offered the opinion that, as an at-will employee, the Plaintiff could be terminated. *Id.* at 47.

Ms. Atkins and Ms. Ball determined that the Plaintiff's termination was the only way to appease WMH's disgruntled employees. Accordingly, at their direction, Mr.

Channell terminated the Plaintiff on April 14, 2005, after only three days of employment. *Id.* at 52-53; Ball Transcript at 36-37.

On May 31, 2005, the Plaintiff filed suit against HMA and Ms. Atkins, and alleged causes of action for breach of contract, breach of the duty of good faith and fair dealing, detrimental reliance, tortious interference, and the intentional infliction of emotional distress. On May 1, 2006, the circuit court granted the Plaintiff's motion to amend her complaint to name Ms. Ball as a defendant.

By Order of July 28, 2006, the circuit court granted the Defendants' motion for summary judgment as to the Plaintiff's causes of action for breach of contract, breach of the duty of good faith and fair dealing, and detrimental reliance, but did not address the pending claims for tortious interference and intentional infliction of emotional distress. Thereafter, the circuit court entered a new scheduling order, which established a new deadline for the filing of dispositive motions, and the Defendants filed their motion for summary judgment as to the remaining claims.

By Order of February 7, 2007, the circuit court granted the Defendants' motion for summary judgment as the Plaintiff's claims of tortious interference and intentional infliction of emotional distress.

ASSIGNMENT OF ERRORS RELIED UPON ON APPEAL

I. **THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO THE PLAINTIFF'S BREACH OF CONTRACT CLAIM BECAUSE THE CIRCUIT COURT ACKNOWLEDGED THAT THE EXISTENCE OF**

A CONTRACT IS AN ISSUE OF FACT FOR THE JURY.

II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO THE PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING BECAUSE THE CIRCUIT COURT HAD ALREADY ACKNOWLEDGED THAT THE EXISTENCE OF A CONTRACT IS A QUESTION OF FACT FOR THE JURY.

III. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF HAD NO DETRIMENTAL RELIANCE CLAIM BECAUSE THERE WAS NO EXPRESS PROMISE AS TO THE DURATION OF HER EMPLOYMENT.

IV. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF COULD NOT MAINTAIN A CLAIM FOR TORTIOUS INTERFERENCE BECAUSE WHETHER ATKINS AND BALL ACTED AS INDIVIDUALS, RATHER THAN AS EMPLOYEES, IS AN ISSUE OF FACT.

V. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF COULD NOT MAINTAIN A CLAIM FOR THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BECAUSE WHETHER THE DEFENDANTS' CONDUCT TOWARD THE PLAINTIFF CONSTITUTED THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IS AN ISSUE OF FACT.

POINTS AND AUTHORITIES AND DISCUSSION OF LAW

STANDARD OF REVIEW

This Court reviews *de novo* a circuit court's entry of summary judgment. Syllabus Point 1, *Painter v. Peavy*, 451 S.E.2d 755 (W.Va. 1994). "The circuit court's function at the summary judgment stage is not to weigh the evidence and determine the truth of the matter, but is to determine whether there is a genuine issue for trial." Syllabus Point 3, *Painter*, 451 S.E.2d 755. Further, the Court "must draw any permissible inference from the

underlying facts in the most favorable light to the party opposing the motion." *Williams v. Precision Coil, Inc.*, 459 S.E.2d 329, 336 (W.Va. 1995) (citations omitted).

In *Williams*, the Court noted that, "[c]ourts take special care when considering summary judgment in employment and discrimination cases because state of mind, intent, and motives may be crucial elements. It does not mean that summary judgment is never appropriate." *Id.* at 338.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO THE PLAINTIFF'S BREACH OF CONTRACT CLAIM BECAUSE THE CIRCUIT COURT ACKNOWLEDGED THAT THE EXISTENCE OF A CONTRACT IS AN ISSUE OF FACT FOR THE JURY.

When WMH offered the Plaintiff the position of Benefit and Special Projects Coordinator, WMH presented her with a letter dated March 28, 2005, which was signed by Mr. Channell, Mr. Mahaffey, and Mr. Moore, all members of WMH's management. The letter confirmed the Plaintiff's salary and informed her of her eligibility for participation in WMH's employee benefit program. The Plaintiff signed the letter on March 29, 2005 and returned it to WMH, thus indicating her acceptance of the offer of employment and terms and conditions of the same. At that point, the letter was an employment contract between the Plaintiff and the Defendants.

The Defendants' position below was that the letter was an offer of employment and not a contract because the letter was silent as to the duration of the Plaintiff's employment.

Therefore, the Plaintiff was an at-will employee whose employment could be terminated at any time, with or without cause.

In considering the parties' positions, the circuit court stated that, "[t]his [whether the letter was a contract] is not a determination for the Court to make at this stage, but is, rather, a jury issue." July 28, 2006 Order at 6. "Therefore, the Court does not make a determination whether the letter constitutes an employment contract." *Id.*

At that point, having recognized that the issue of whether the letter was a contract must be determined by the jury and not by the court, the circuit court should have denied the Defendants' motion for summary judgment, at least as to the Plaintiff's breach of contract claim, if not as to all her claims. Instead, the circuit court determined that "this [not determining whether the letter constitutes an employment contract] does not preclude disposition of the other issues before the Court." *Id.*

The circuit court then made several findings of fact, including that there was no ambiguity in the letter's language, there was no language in the letter addressing the length of the Plaintiff's employment "or otherwise altering the 'at will' status of the relationship," and that any employment under the purported contract was of indefinite duration. *Id.* at 7. Thus, despite its earlier statement regarding the limited scope of its inqiury, the circuit court found no genuine issue of material fact as to the Plaintiff's employment status and concluded that she was an at-will employee. The circuit court then found that "even in the event the Letter is found to be an employment contract, its terms were not breached by the Hospital[,]" and granted the Defendants' motion for summary judgment as to the breach

of contract claim. *Id.* at 9.

This Court should reverse the entry of summary judgment on the breach of contract claim because the circuit court clearly and unequivocally identified a genuine issue of material fact, which made summary judgment inappropriate. Indeed, the circuit court correctly noted that the determination of whether the letter was a contract "is, rather, a jury issue." Nevertheless, the circuit court proceeded to ignore its own determination and decided other issues that necessarily depended on whether a jury found that the letter was a contract.

The circuit court quoted from footnote 18 in *Williams v. Precision Coil, Inc.*, 459 S.E.2d 329 (W.Va. 1995), in which Justice Cleckley noted that, "[w]hile the determination of what constitutes a contract under our relevant cases is a question of law, **the determination of whether particular circumstances fit within the legal definition of a contract under our cases is a question of fact.**" *Id.* at 340 (emphasis added). The circuit court's recognition of the existence of a question of fact should have ended its inquiry and precluded summary judgment in the Defendants' favor.

The circuit court found that even if the letter was a contract (which was an issue for the jury), the Defendants did not breach the contract. In so finding, the circuit court impermissibly weighed the evidence and determined the truth of the matter, contrary to the holdings of this Court. *See, e.g., Painter v. Peavy*, 451 S.E.2d 755 (W.Va. 1994). Such a determination was improper. Even though the circuit court found that there was no ambiguity in the language of the purported contract and no language addressing the length

of the Plaintiff's employment, it was for the jury to determine whether the letter was a contract, and if so, whether the Defendants breached the contract. Whether a contract was breached is an issue of fact to be determined by a jury. *Conley v. Johnson*, 580 S.E.2d 865 (W.Va. 2003).

Therefore, based on the circuit court's own determination that an issue of fact existed regarding whether the letter was a contract, summary judgment in the Defendants' favor was improper and should be reversed.

II. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO THE PLAINTIFF'S CLAIM FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING BECAUSE THE CIRCUIT COURT HAD ALREADY ACKNOWLEDGED THAT THE EXISTENCE OF A CONTRACT IS A QUESTION OF FACT FOR THE JURY.

The Plaintiff alleged that the Defendants breached the duty of good faith and fair dealing by terminating her from her employment. The circuit court also granted summary judgment on this claim because there is no "implied covenant of good faith and fair dealing in the context of an at-will employment contract." July 28, 2006 Order at 9.

The Plaintiff agrees that she cannot maintain a claim for breach of the duty of good faith and fair dealing in the absence of a contract. That is not the issue here, however. As discussed above, the circuit court found that whether WMH's letter to the Plaintiff was a contract was an question of fact for the jury to determine. Accordingly, the circuit court should not have granted summary judgment on the Plaintiff's claim for breach of the duty of good faith and fair dealing, as the claim depends on whether the jury finds that the letter

was a contract. If the jury finds that WMH's letter to the Plaintiff was a contract, then the jury may consider whether the Defendants breached their duty of good faith and fair dealing toward the Plaintiff.

III. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF HAD NO DETRIMENTAL RELIANCE CLAIM BECAUSE THERE WAS NO EXPRESS PROMISE AS TO THE DURATION OF HER EMPLOYMENT.

The record is clear that the Plaintiff relied on WMH's offer of employment, as expressed in the March 28, 2005 letter, which she and WMH's officers signed, and resigned her stable, secure employment in Charleston. Consequently, she was harmed by her unjustified and improper termination after only three days of employment with WMH. The Plaintiff alleged that even if her employment was determined to be at-will, there still existed a question of fact for the jury as to whether she believed that her employment would be "permanent."

The Plaintiff accepted employment with WMH on the belief that her position would be permanent, which was clearly reasonable based on the March 28, 2005 letter. That her new position would be permanent was the basis for her decision to resign from her employment in Charleston and accept the position with WMH.

The Supreme Court of Appeals addressed the elements of a claim for detrimental reliance (or equitable estoppel) in *Tiernan v. Charleston Area Medical Center, Inc.*, 575 S.E2d 618 (W.Va. 2002). In *Tiernan*, the Court quoted Syllabus Point 4 from *Barnett v. Wolfolk*, 140

S.E.2d 466 (W. Va. 1965), which held that:

> Equitable estoppel cannot arise merely because of action taken by one on a misleading statement made by another. In addition thereto, it must appear that the one who made the statement intended or reasonably should have expected that the statement would be acted upon by the one claiming the benefit of estoppel, and that he, without fault himself, did act upon it to his prejudice.

In *Tiernan*, the Court applied *Barnett*'s holding to the plaintiff's claim for breach of promise, which she sought to enforce through the doctrine of detrimental reliance. The Court found that in order to prevail on her claim, Tiernan would have to prove:

> (1) by clear and convincing evidence, that CAMC made an express promise to its employees that they would suffer no retaliation or adverse action for speaking out and/or talking to newspaper reporters in connection with the campaign in opposition to nurse staffing and employment policies; and that CAMC intended or reasonably should have expected that such a promise would be relied and/or acted upon by an employee like Ms. Tiernan; and (2) by a preponderance of the evidence, that Ms. Tiernan, being without fault herself, reasonably relied on that promise by CAMC, which reliance led to her discharge, and that in discharging Ms. Tiernan, CAMC breached that promise.

575 S.E.2d at 625.

The Plaintiff has satisfied *Tiernan*'s requirements. First, WMH made an express promise to the Plaintiff that it would employ her, as reflected by its March 28, 2005 letter, which WMH intended or reasonably should have expected would be relied and/or acted upon by the Plaintiff. Second, the Plaintiff, being without fault herself, reasonably relied on WMH's express promise of employment and resigned from her prior employment in Charleston in order to accept the position at WMH, which caused the Plaintiff to be harmed when WMH terminated her after only three days of employment.

In granting the motion for summary judgment on this claim, the circuit court again focused on the duration of the Plaintiff's employment and found that "[w]ithout an express promise concerning the duration of her employment, Ms. Hatfield cannot maintain a cause of action for detrimental reliance. The Plaintiff acknowledges there was no such promise and therefore summary judgment is appropriate." July 28, 2006 Order at 10.

That analysis ignores the facts that were developed during discovery, however, which precluded summary judgment in the Defendants' favor. WMH's March 28, 2005 letter represented an express promise to employ the Plaintiff. The Defendants did not offer any testimony or evidence that the letter was not an offer of employment or that the Plaintiff erroneously interpreted the letter as an offer of employment.

Then, in reasonable reliance on that express promise and through no fault on her own part, the Plaintiff resigned from her employment in Charleston in order to begin her employment with WMH. Again, the Defendants did not offer any testimony or evidence that the Plaintiff did not rely on that offer of employment or was not harmed by her termination.

That the letter did not specify any duration for the Plaintiff's employment does not defeat the Plaintiff's claim for detrimental reliance and should not have been the basis for summary judgment. The relevant criteria under *Tiernan* are whether there was an express promise that the Defendants intended or reasonably should have expected would be relied and/or acted upon by an employee like the Plaintiff, and that the Plaintiff, being without fault herself, reasonably relied on that promise to her detriment.

Tiernan also makes clear that a claim for detrimental reliance is one for the jury's consideration. That is particularly true here, where the Plaintiff was terminated only three days after beginning her employment, and thus her reliance on WMH's offer of employment and the harm she suffered as a result are issues of fact.

In *Tiernan*, the Court found that because CAMC terminated Tiernan on the day that she invited a newspaper reporter to accompany her to watch an internally-televised announcement, "the obvious temporal proximity of the discharge to the protected activity" meant that Tiernan stated a *prima facie* case. *Id.* at 622. Similarly, regardless of whether the duration of the Plaintiff's employment was specified, she stated a claim for detrimental reliance that is proper for the jury's consideration.

IV. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF COULD NOT MAINTAIN A CLAIM FOR TORTIOUS INTERFERENCE BECAUSE WHETHER MS. ATKINS AND MS. BALL ACTED AS INDIVIDUALS, RATHER THAN AS EMPLOYEES, IS AN ISSUE OF FACT.

The Plaintiff named Ms. Atkins and Ms. Ball as defendants in their individual capacities. The Plaintiff alleged that they acted as individuals in tortiously interfering with her employment and causing her to be terminated from her position at WMH.

The Defendants moved for summary judgment on the grounds that as a matter of law, WMH and its employees, Ms. Atkins and Ms. Ball, could not interfere with their own employment relationship with the Plaintiff. The Defendants alleged that there was no evidence to support the Plaintiff's claim that Ms. Atkins and Ms. Ball acted in their

individual capacities in terminating the Plaintiff.

The circuit court agreed with the Defendants' position and granted their motion for summary judgment, finding that:

> WMH, who was a party to the employment relationship with Hatfield, cannot be held liable for allegedly interfering with its own contract or business relationship with [*sic*]. Furthermore, Atkins and Ball who were employees of WMH and acting within the scope of their duties in running WMH's day-to-day operations, that included the authority to terminate, cannot be liable, as a matter of law, for the alleged tortious interference with the employment relationship between WMH and Hatfield.

February 7, 2007 Order at 10-11.

The circuit court also determined that the Plaintiff did not offer any counter-affidavits or deposition testimony to support her contention that she was not aware of any other employee's interest in the position of Benefit and Special Projects Coordinator, nor was she aware of any irregularities with the position. *Id.* at 9.

That is not correct, however, as the Plaintiff offered her own deposition testimony at page 86 as evidence that she was not aware of any other employee's interest in the position and attached the transcript as an exhibit to her response:

> Q. Have you heard ever through the grapevine or in any manner of anyone else who applied for the position at Williamson Memorial Hospital? And before you answer, let me rephrase that. I'm not interested in any discussions you may have had with your attorney. When I say – or otherwise leave out your attorney, but other than that, have you been made aware of anyone else that applied for the position that was offered to you?
>
> A. No.

Thus, the Plaintiff did submit evidence to support her contention that she was not aware

of any other employee's interest in the position.

The circuit court found that even when the evidence was viewed in the light most favor able to the Plaintiff, there was no evidence to suggest that Ms. Atkins and Ms. Ball were not acting within the scope of their employment and duties as WMH's employees when the Plaintiff's employment was terminated, and that Ms. Atkins and Ms. Ball consulted with corporate management at WMH's parent corporation and obtained approval for the Plaintiff's termination. February 7, 2007 Order at 10.

That is not accurate, however, as the testimony was clear that neither Ms. Atkins nor Ms. Ball ever requested approval or permission to terminate the Plaintiff. In fact, Kathleen Holloway, the vice-president with whom Ms. Atkins and Ms. Ball spoke, testified that the Plaintiff could have been permitted to remain in her position, without Ms. Atkins or Ms. Ball suffering any repercussions. Holloway Transcript at 60.

This Court set forth the elements for a claim of tortious interference with a contract or business relationship in *Tiernan v. Charleston Area Medical Center, Inc., supra.* In *Tiernan,* the Court relied upon its prior holding in *Torbett v. Wheeling Dollar Sav. & Trust Co.,* 314 S.E.2d 166 (W.Va. 1983), that in order to establish a *prima facie* case of tortious interference in an employment relationship, a plaintiff must show: (1) existence of a contractual or business relationship or expectancy; (2) an intentional act of interference by a party outside that relationship or expectancy; (3) proof that the interference caused the harm sustained; and (4) damages. *Tiernan,* 506 S.E.2d at 591-92.

The Plaintiff satisfied each of *Tiernan*'s four factors and established a *prima facie* case

of tortious interference: (1) she had a business relationship with WMH through her employment; (2) Ms. Atkins and Ms. Ball, as individuals outside that relationship, intentionally interfered with the Plaintiff's relationship; (3) Ms. Atkins and Ms. Ball terminated the Plaintiff, which constitutes proof that the interference caused the harm sustained; and (4) the Plaintiff sustained damages as a result of her termination.

The Defendants argued that even if Ms. Atkins and Ms. Ball were not parties to any contract or relationship regarding the Plaintiff's employment, they were entitled to summary judgment because the evidence was undisputed that they ordered the Plaintiff's termination to "promote WMH's policy to hire employees, based on a fair process to all interested and qualified individuals." Memorandum at 10. If the Defendants themselves raised the issue of Ms. Atkins and Ms. Ball's motivation or intent in deciding to terminate the Plaintiff, which they did, they created a genuine issue of material fact.

The issue presented by whether Ms. Atkins and Ms. Ball acted as WMH employees or as individuals in orchestrating the Plaintiff's termination (and raised by the Defendants in their effort to justify why Ms. Atkins and Ms. Ball acted as they did) highlights the caution expressed by this Court in prior decisions that have dealt with summary judgment in employment cases. In addition to *Williams v. Precision Coil, Inc., supra*, the Court stated in *Conrad v. ARA Szabo*, 480 S.E.2d 801 (W.Va. 1996), that:

> In *Hanlon v. Chambers*, 195 W.Va. 99, 464 S.E.2d 741 (1995), we cautioned circuit courts to be particularly careful in granting summary judgment in employment discrimination cases. Although we refuse to hold that simply because motive is involved that summary judgment is unavailable, **the issue of discriminatory animus is generally a question of**

> **fact for the trier of fact, especially where a prima facie case exists.** The issue does not become a question of law unless only one conclusion could be drawn from the record in the case. **In an employment discrimination context, the employer must persuade the court that even if all of the inferences that could reasonably be drawn from the evidentiary materials of the record were viewed in the light most favorable to the employee, no reasonable jury could find for the plaintiff.** Because the record in this case could lead a rational trier of fact to find for the plaintiff on several claims, summary judgment was inappropriate.

480 S.E.2d at 809 (emphasis added).

Although this case does not involve allegations of discrimination, the Plaintiff's claim of wrongful termination by Ms. Atkins and Ms. Ball implicates the same issues of "state of mind, intent, and motives" mentioned by *Williams* that make summary judgment improper. And as to this specific issue, the circuit court improperly weighed the evidence and determined the truth of the matter by finding that Ms. Atkins and Ms. Ball acted as WMH employees, when it should have concluded that whether Ms. Atkins and Ms. Ball acted as individuals or as WMH employees constituted a genuine issue of material fact. Ms. Atkins' and Ms. Ball's own testimony that they took it upon themselves to fire the Plaintiff after she had started work at WMH precluded summary judgment for the Defendants.

V. THE CIRCUIT COURT ERRED IN FINDING THAT THE PLAINTIFF COULD NOT MAINTAIN A CLAIM FOR THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BECAUSE WHETHER THE DEFENDANTS' CONDUCT TOWARD THE PLAINTIFF CONSTITUTED THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IS AN ISSUE OF FACT.

The Plaintiff also alleged that the Defendants were liable for the intentional infliction of emotional distress upon her. The Defendants moved for summary judgment on the claim, on the grounds that the evidence does not allow the conclusion that the conduct of any of the Defendants could reasonably be considered so extreme and outrageous as to constitute the intentional infliction of emotional distress.

In evaluating the motion, the circuit court reviewed the criteria established by *Travis v. Alcon Laboratories, Inc.*, 504 S.E.2d 419 (W.Va. 1998), for proof of a claim for intentional infliction of emotional distress:

> ... in order for a plaintiff to prevail on a claim for intentional or reckless infliction of emotional distress, four elements must be established. It must be shown: (1) that the defendant's conduct was atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency; (2) that the defendant acted with the intent to inflict emotional distress, or acted recklessly when it was certain or substantially certain emotional distress would result from his conduct; (3) that the actions of the defendant caused the plaintiff to suffer emotional distress; and, (4) that the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.

Id. at 425.

The Plaintiff's claim was based on the Defendants' complete failure to inform her that her termination was imminent or that her employment had become problematic for the Defendants. The circuit court found that there was no evidence that:

> ... the Plaintiff had any discussions with either Atkins or Ball regarding her termination and there is no evidence that any agent or employee of WMH made any derogatory or inappropriate statements directed toward the Plaintiff with respect to her employment or termination. Furthermore, there is no evidence that any of the Defendants publicly ridiculed, verbally abused, harassed or made any accusations against the

Plaintiffs [*sic*].

February 7, 2007 Order at 12.

That finding overlooks that what the Defendants actually did inflicted emotional distress on the Plaintiff, however. The Plaintiff never alleged that she was subjected to any of the behavior identified by the circuit court. Rather, the Plaintiff's allegation was that the Defendants deliberately failed to inform her that her job was in jeopardy or could be eliminated, nor did they take any action to alert her that her employment situation was so precarious.

The circuit court speculated that while the Plaintiff may have been embarrassed as a result of her termination, it found that embarrassment is not a recoverable form of emotional distress. Not only does the circuit court's finding ignore the *Travis* Court's holding that "severe emotional distress includes (but is not limited to) such reactions as ... embarrassment," 504 S.E.2d at 430, but it ignores that the reasonableness of a plaintiff's reaction would normally be a jury question and not susceptible to resolution through a motion for summary judgment. *Id.*

The Plaintiff recognizes that her situation may not present circumstances as extreme as in other cases that the Court has considered. That is not to say, however, that the distress that was inflicted upon the Plaintiff and that she suffered was any less than if Ms. Atkins and Ms. Ball had publicly ridiculed or verbally abused her. Indeed, the Plaintiff suggests that, under these circumstances, being terminated after three days of employment did constitute public ridicule.

Also, as noted by the *Travis* Court, the issue of the relationship between the plaintiff and the defendant is also proper for the jury's consideration: "[T]he existence of a special relationship in which one person has control over another, as in the employer-employee relationship, may produce a character of outrageousness that otherwise might not exist." *Id.* at 426 (quoting *Bridges v. Winn-Dixie Atlanta, Inc.*, 176 Ga.App. 227, 230, 335 S.E.2d 445, 448 (1985)). Thus, the employment relationship at issue here caused the Defendants' conduct to be outrageous, which is also relevant to the jury's consideration of whether the Defendants' conduct was in fact outrageous.

RELIEF PRAYED FOR

Plaintiff Crystal A. Hatfield prays that this Honorable Court reverse the July 28, 2006 and February 7, 2007 Orders of the Circuit Court of Mingo County, West Virginia, and remand this action to the Circuit Court of Mingo County for further proceedings.

CRYSTAL A. HATFIELD
By Counsel

Jeffrey V. Mehalic (WV State Bar No. 2519)
Law Offices of Jeffrey V. Mehalic
2011 Quarrier Street
P. O. Box 11133
Charleston, WV 25339-1133
(304) 346-3462
Counsel for Petitioner Crystal A. Hatfield

Robinson & McElwee PLLC
400 Fifth Third Center
700 Virginia Street, East
P. O. Box 1791
Charleston, WV 25326
(304) 344-5800
Of counsel for Petitioner Crystal A. Hatfield

BEFORE THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CRYSTAL A. HATFIELD,

Appellant, Plaintiff below,

v.

No. 33702

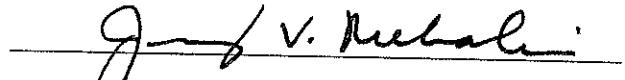
HEALTH MANAGEMENT ASSOCIATES OF WEST VIRGINIA, INC. d/b/a WILLIAMSON MEMORIAL HOSPITAL, and JACQUELINE ATKINS, individually, and CASSIE BALL, individually,

Appellees, Defendants below.

CERTIFICATE OF SERVICE

I, Jeffrey V. Mehalic, hereby certify that on this 7th day of December, 2007, I served the foregoing **BRIEF OF APPELLANT CRYSTAL A. HATFIELD** upon the following counsel of record by depositing a true copy thereof in the United States mail, postage prepaid, addressed to her at her last known office address as listed below:

Debra A. Nelson, Esquire
Mundy & Nelson
P. O. Box 2986
Huntington, WV 25728
Counsel for Appellees Health Management Associates of West Virginia, Inc. d/b/a Williamson Memorial Hospital, Jacqueline Atkins, individually, and Cassie Ball, individually



Jeffrey V. Mehalic (WV State Bar No. 2519)